

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICK E. NOEL,

No. C-08-3777 EMC (PR)

Petitioner,

v.

**ORDER GRANTING IN PART
PETITION FOR WRIT OF HABEAS
CORPUS; AND REMANDING ACTION
TO STATE COURT**

GREG LEWIS, Warden,

Respondent.

(Docket No. 37)

Petitioner, a state prisoner, filed this habeas corpus action under 28 U.S.C. § 2254 in this Court to challenge the nine felony convictions he received in 2005 in the Mendocino County Superior Court (attempted murder, two counts of assault with a firearm, unlawful participation in a criminal street gang, two counts of endangering a child, two counts of kidnapping, and vehicle theft), for which he received a sentence of 41 years in state prison. He raised several claims in his habeas petition, including one that asserted that his conviction for gang participation (under Cal. Penal Code section 186.22(a)) was not supported by sufficient evidence. This Court denied this and all other claims in the petition and entered judgment in favor of respondent on May 12, 2012.

Petitioner appealed. During the pendency of the appeal, the state supreme court ruled that section 186.22(a) requires that the predicate felony be committed by at least two members of the same gang. *People v. Rodriguez*, 290 P.3d 1143, 1147-48, 1151 n.8 (Cal. 2012). There was no evidence that another member of Petitioner's gang participated in the predicate felony. Because of this insufficiency of the evidence, the Ninth Circuit Court of Appeals concluded that the state court's decision affirming Petitioner's conviction under section 186.22(a) was contrary to clearly


1 established federal law. In consequence, the Ninth Circuit, on March 19, 2015, reversed this Court's
2 judgment regarding Petitioner's section 186.22(a) claim, remanded the action to this Court with
3 instructions to grant the writ consistent with its opinion, and otherwise affirmed this Court's
4 decision. The Ninth Circuit issued its mandate on May 6, 2015.

5 Accordingly, the petition for writ of habeas corpus is conditionally granted as to Petitioner's
6 conviction under section 186.22(a). The action is hereby remanded to the Mendocino County
7 Superior Court to allow that court to sentence Petitioner consistent with this order and that of the
8 Ninth Circuit. If Petitioner is not resentenced within 180 days from the date of this order, this Court
9 will vacate Petitioner's section 186.22(a) conviction. This Court shall retain jurisdiction over this
10 action until the opinions of this Court and the Ninth Circuit are implemented.

11 The Clerk shall send a copy of this order and the Ninth Circuit's order (Docket No. 49) to
12 Petitioner, Petitioner's attorney, Respondent, and the Mendocino County Superior Court.
13 Respondent shall file a report on the status of this action when the state superior court resentences
14 Petitioner, or within 180 days of this order, whichever is earlier.

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16 IT IS SO ORDERED.

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18 Dated: June 8, 2015

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EDWARD M. CHEN
United States District Judge